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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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DATE: SEP 0 2 2011 Office: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is food equipment manufacturing company. It seeks to employ the beneficiary permanently in the United States as an operations research analyst pursuant to section 203(b)(2) of the Immigration and Nationality Act (Act), 8 U.S.C. §1153(b)(2).[1] As required by statute, an ETA Form 9089, Application for Permanent Employment Certification (ETA Form 9089), approved by the Department of Labor (DOL) accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification because the beneficiary's master of science degree in international business from California International University is not from an accredited institution of higher education. The director denied the petition accordingly.

The AAO issued a request for evidence (RFE) on May 16, 2011 and requested the petitioner to submit documentary evidence showing that California International University is a regionally accredited institution of higher education. The AAO further instructed that evidence includes but is not limited to, recognition by a nationally recognized accrediting agency or association acknowledged by the United States Secretary of Education and/or the Council on Higher Education Accreditation or regionally recognized accrediting agency or association, such as Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities, that has jurisdiction over the region California International University locates. The AAO requested for a complete copy of the SEVP approval by which United States Citizenship and Immigration Services (USCIS) approved California International University as one of SEVP Approved Schools to issue I-20 forms for its foreign students.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Beyond the director's decision, the AAO also finds an additional ground of ineligibility. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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[1] Section 203(b)(2) of the Immigration and Nationality Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the ETA Form 9089 was accepted for processing by any office within the employment system of DOL. *See* 8 C.F.R. § 204.5(d). Here, the ETA Form 9089 was accepted on January 21, 2008.

If a petition were the only petition filed by the petitioner, the petitioner would be required to produce evidence of its ability to pay the proffered wage to the single beneficiary of the instant petition. However, where a petitioner has filed multiple petitions for multiple beneficiaries which have been pending or approved simultaneously, the petitioner must produce evidence that it has the ability to pay the proffered wages to each of the beneficiaries of its pending petitions or approved petitions, including I-129 nonimmigrant petitions. USCIS records show that the petitioner has filed 81 petitions (24 immigrant petitions and 57 nonimmigrant petitions).

In its RFE, the AAO notes that the record does not contain required initial evidence of the ability to pay the proffered wage in the form of annual reports, federal tax returns or audited financial statements for 2008 through the present. Additionally, the record does not contain any evidence showing that the petitioner paid all of the other beneficiaries of immigrant and nonimmigrant petitions their proffered wages during these relevant years, and therefore, the petitioner failed to establish its ability to pay the proffered wages to the instant beneficiary and all beneficiaries of the immigrant petitions filed by the petitioner from 2008, the year of the priority date in this matter, to the present.

The AAO specifically alerted the petitioner that failure to respond to the RFE would result in dismissal since the AAO could not substantively adjudicate the appeal without the information requested. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). However, as of this date, more than 60 days later, the AAO has not received any correspondence from the petitioner and its counsel in response to the RFE.

The record does not contain any documentary evidence to demonstrate that the beneficiary obtained a U.S. master of science degree in international business from a regionally accredited institution of higher education. The goal of accreditation is to ensure that education provided by institutions of higher education meets acceptable level of quality. The U.S. Department of Education does not accredit educational institutions and/or programs. However, the Secretary of Education is required by law to publish a list of nationally recognized accrediting agencies that the Secretary determines to be reliable authorities as to the qualify of education or training provided by the institutes of higher education and the higher education program they accredit. Accrediting agencies, which are private educational associations of regional or national scope, develop evaluation criteria and conduct peer evaluations to assess whether or not those criteria are met. Institutions and/or programs that request an agency's evaluation and that meet an agency's criteria are then "accredited" by that agency. *See* U.S. Department of Education official website at http://ope.ed.gov/accreditation (accessed August 22, 2011). Therefore, without evidence showing that a higher educational institution is accredited by a nationally or regionally recognized accrediting agency, the AAO cannot accept any diploma or degree from that educational institution as qualifying education required for the purposes of immigrant

processing. Thus, the petitioner failed to establish that the beneficiary satisfied the minimum level of education stated on the labor certification.

The record does not contain regulatory-prescribed evidence showing that the petitioner paid the instant beneficiary and all other beneficiaries their proffered wages from the priority date to the time when they obtain lawful permanent resident status or that the petitioner had sufficient net income or net current assets to pay the proffered wages.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

Furthermore, the regulation at 8 C.F.R. § 204.5(g)(2) states that USCIS may request additional evidence in appropriate cases. Although specifically and clearly requested by the AAO, the petitioner declined to provide evidence requested for the beneficiary's qualifications and the petitioner's ability to pay the proffered wage. The petitioner's failure to submit these documents cannot be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). Accordingly, the appeal must be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Here, that burden has not been met.

ORDER: The appeal is dismissed.